

**DEPARTMENT OF HEALTH
ENVIRONMENTAL HEALTH ADMINISTRATION**

**NOTICE OF FILING OF APPLICATION
TO PERFORM VOLUNTARY CLEANUP**

Pursuant to § 601(b) of the Brownfield Revitalization Amendment Act of 2000 (Act) (D.C. Law 13-312; D.C. Official Code § 8-636.01(b)), effective June 13, 2001, the Voluntary Cleanup Program in the D.C. Department of Health, Environmental Health Administration (EHA), Bureau of Hazardous Materials (BHM), is informing the public that it has received an application to participate in the Voluntary Cleanup Program (VCP). Application VCP-2005-005 pertains to certain real property located at 100 I (Eye) Street, S.E. The applicant is Eye Street, L.P., c/o JPI, 8300 Greensboro Drive, Suite 600, McLean, Virginia 22102, Attn. Mr. Aaron Liebert, Authorized Representative. The applicant intends to redevelop the property for use as two 13-story buildings containing 750 residential units and 600 parking spaces. Pursuant to § 601(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission in which the property is located.

Interested persons may submit written comments on the proposed approval of the application to the address listed below. The application identifies moderate amounts of total petroleum hydrocarbons (TPH) and polycyclic aromatic hydrocarbons (PAH's) in the soil. The application also identifies limited amounts of TPH and methyl tertiary butyl ether (MTBE) in the groundwater. The EHA is required to consider all public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion. The application will be available for public review at the following location:

Voluntary Cleanup Program
Bureau of Hazardous Materials, EHA
51 N Street, N.E., Room 3024
Washington, DC 20002

Interested persons may also obtain a copy of the application for a small charge to cover the cost of copying by contacting the Voluntary Cleanup Program at the above address or calling (202) 535-1747.

Written comments must be received within fourteen (14) days from the date of publication of this notice in the *District of Columbia Register* and should be addressed to the attention of Patricia N. Young, Esq., Program Manager at the address listed above.

Howard University Middle School
Of Mathematics and Science
2400 Georgia Avenue NW
Suite 302
Washington DC 20059

The Howard University Middle School will receive bids until 5:00 pm Friday August 26, 2005 for the following three separate services:

1. Onsite networking, audio/visual, and computer engineering support for 260 users.
2. Building cleaning/maintenance services for an 18,000 sq ft facility.
3. Unarmed school security services.

Companies wishing to submit bids for any of the three services may obtain detailed requirements and all necessary forms from:

Yohance Maqubela
2731 Georgia Ave, NW
Washington, DC 20001
(202) 806-4812

Office of the Secretary of the
District of Columbia

August 5, 2005

Notice is hereby given that the following named persons have been appointed as Notaries Public in and for the District of Columbia, effective on or after September 1, 2005.

Allen, Rae N.	Rpt	239 33 rd St, NE 20019
Belinkie, Harris J.	Rpt	Attorney at Law 1025 Conn Ave, NW#611 20036
Brylawski, Henry H.	Rpt	3003 Van Ness St, NW#1001W 20008
Chambers, Mary E.	Rpt	O A G/C S S D 441 4 th St, NW 5 th Fl 20001
Corpening, Marie B.	Rpt	Sutherland Asbill Brennan 1275 Pa Ave, NW 20004
Cox, Kristine A.	Rpt	EFO Capital Mgt 21 Dupont Cir, NW#330 20036
Cueto, Belkis A.	Rpt	Groom Law Group 1701 Pa Ave, NW#1200 20006
Duren, Dionne M.	Rpt	O A G/C S S D 441 4 th St, NW 5 th Fl 20001
Edwards, Sandra M.	Rpt	H U D 451 7 th St, SW 20410
Galyen, Karen S.	Rpt	Tri-State Commercial... 1150 18 th St, NW#575 20036
Gregor, Carla S.	Rpt	Covington & Burling 1201 Pa Ave, NW 20004

Mitchell, Patricia G.	Rpt	L A D Reporting 1100 Conn Ave,NW#850 20036
Noel, Aniko B.	Rpt	Davis Wright Tremaine 1500 K St,NW#450 20005
Piercy, Barbara J.	Rpt	Cafritz Foundation 1825 K St,NW 20006
Pryor, Anthony E.	Rpt	B S A 1150 18 th St,NW#700 20036
Ratherdale, Nancy J.	Rpt	Bell Boyd Lloyd 1615 L St,NW#1200 20036
Shaw, Janet Lee	Rpt	Powell Tate et al 700 13 th St,NW#800 20005
Size, Laurie S.	Rpt	J. C. Associates 1516 P St,NW 20005
Washington, Jr., Maurice	Rpt	Robert Ades & Associates 1140 Conn Ave,NW#1100 20036
Wheatley, Carla	Rpt	NatlAssoc/CommHealth Ctrs 2001 L St,NW#300 20036
White, Gercha R.	Rpt	Gregory Edwards LLC 1100 H St,NW#450 20005
Young, Sharon P.	Rpt	Sanders Schnabel et al 900 17 th St,NW#900 20006

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SECRETARY OF THE
DISTRICT OF COLUMBIAGOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE
OFFICE OF THE SECRETARY
OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20001

Final Decision

Appeal of: Richard Mathis

Matter No: 418170

Date: August 12, 2005

Arnold R. Finlayson, Esq., Director, Office of Documents and Administrative Issuances, participated in the preparation of this decision.

INTRODUCTION

The above-captioned matter, commenced pursuant to the administrative review provisions of the District of Columbia Freedom of Information Act ("D.C.-FOIA"), D.C. Official Code § 2-537(a) (2001),¹ is before the Secretary of the District of Columbia for a final decision on the merits of the formal appeal filed by Mr. Richard Mathis

¹ Pursuant to section 207(a) of the D.C.-FOIA, "[a]ny person denied the right to inspect a public record may petition the Mayor to review the public record to determine whether it may be withheld from public inspection." D.C. Official Code § 2-537(a).

(hereinafter the "appellant") with the Honorable Anthony A. Williams.²

The appellant is challenging the Office of Campaign Finance's ("OCF") denial of his D.C.-FOIA request for certain documents containing information about the award of bonuses to OCF employees.

BACKGROUND

The record indicates that by letter dated May 6, 2004, the appellant submitted a D.C.-FOIA request³ to the Director of OCF which sought the disclosure of records pertaining to "[a]ll bonuses issued by the Office of Campaign Finance for the periods covering January 1, 1997 through May 6, 2004[; and each] individual's name, title, grade, date of

² By Mayor's Order 97-177, dated October 9, 1997, the Secretary of the District of Columbia was delegated the authority vested in the Mayor to render final decisions on certain administrative appeals and petitions for review.

³ A copy of the appellant's D.C.-FOIA request was not a part of the record on appeal before the Office of the Secretary. However, his appeal letter provides two bullets which define the categories of information he requested as follows:

- All bonuses issued by the Office of Campaign Finance for the periods covering January 1, 1997 through May 6, 2004.
- Provide the individual's name, title, grade, date of issuance, and amount.

issuance, and amount.'" Letter dated May 20, 2004 from K. S. Williams, Esq., General Counsel, OCF, to R. Mathis.

OCF's response to the appellant's D.C.-FOIA request came from its General Counsel in a letter which, citing D.C. Official Code §§ 2-534(a)(2) & (4), advised him as follows:

A review of the cited provisions reveals that you are not entitled to disclosure of and access to the requested data. The award of a bonus is of a personal nature. Disclosure of the requested records would constitute a clearly unwarranted invasion of personal privacy of the awardee. Moreover, the discussion of the award of a bonus to an employee is pursuant to intra-agency memorandum exchanged between members of the Board of Elections and Ethics (Board), its staff and the OCF Director; and, the award of any bonus is finalized during executive session of a meeting of the Board when its members decide personnel matters. See D.C. Official Code Section 2-502(8)(B).

Id. at pp. 1-2.

OCF's denial of his D.C.-FOIA request prompted the appellant to file the instant appeal with the Mayor which ostensibly seeks an administrative order compelling the disclosure of the requested information.

In his appeal letter, the appellant does not contest OCF's claim that records pertaining to bonuses awarded to OCF's employees constitute information of a personal nature

or challenge its determination that "[d]isclosure of the requested records would constitute a clearly unwarranted invasion of personal privacy of the awardee."

Rather, he asserts that "[t]he purpose of the request was to determine whether bonuses awarded by the Office of Campaign Finance were in accordance to the award limitations established by D.C. Official Code §1-619.019(a) (2001 Edition)." Mathis Appeal Letter ¶ 2.⁴

Following a general overview of the legal principles underlying the D.C.-FOIA, this decision considers the propriety of OCF's denial of the appellant's D.C.-FOIA request.

III. DISCUSSION

A. GENERAL OVERVIEW OF THE D.C.-FOIA

The D.C.-FOIA, like the federal FOIA upon which it was modeled, was enacted in 1976 to divest government officials of broad discretion in determining what, if any, government records should be made available to the public upon the receipt of a request for information. See Subcommittee on

⁴ This office was unable to locate a provision codified at D.C. Official Code § 1-619.019(a). However, D.C. Official Code §§ 1-619.01 through 1-619.03 make provision for cash and honorary awards to employees of the District government.

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Administrative Practice & Procedure of the Senate Committee on Judiciary, 95th Cong., 2d. Sess., *Freedom of Information: A Compilation of State Laws* (Comm.Print 1978); see also Washington Post v. Minority Business Opportunity Commission, 560 A.2d 517, 521 (D.C. 1989). In this regard, the D.C.-FOIA was "designed to promote the disclosure of information, not inhibit it." Id.

The D.C.-FOIA embodies "[t]he public policy of the District of Columbia . . . that all persons are entitled to full and complete disclosure of information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531; see Donahue v. Thomas, 618 A.2d 601, 602 n.2 (D.C. 1992); Newspapers, Inc. v. Metropolitan Police Department, 546 A.2d 990, 993 (D.C. 1988); Barry v. Washington Post Company, 529 A.2d 319, 321 (D.C. 1987).

In order to accord full force and effect to the spirit and intent of the D.C.-FOIA, officials of District of Columbia public bodies are required to construe its provisions "with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information." D.C. Official Code § 2-531; see Washington Post, 560 A.2d at 521; Newspapers, Inc., 546

A.2d at 993. Thus, the policy underlying the D.C.-FOIA favors the broad disclosure of official records in the possession, custody or control of public bodies of the government of the District of Columbia, unless such records (or portions thereof) fall squarely within the purview of one or more of the eleven (11) categories of information which are expressly exempted from the disclosure mandate. See Washington Post, supra; Newspapers, Inc., supra. The statutory exemptions enumerated in the D.C.-FOIA, which protect certain types of confidential and/or privileged information from disclosure, "are to be construed narrowly, with ambiguities resolved in favor of disclosure." Washington Post, supra.

**B. D.C.-FOIA'S BROAD DISCLOSURE MANDATE
AND EXEMPTION SCHEME**

Section 202(a) of the D.C.-FOIA provides that "[a]ny person has [the] right to inspect, and at his or her discretion, to copy any public record of a public body, except as otherwise expressly provided by § 2-534." D.C. Official Code § 2-532(a) (emphasis added).

Section § 2-534 of the D.C. Official Code, conspicuously entitled "**Exemptions from disclosure**," in turn, enumerates eleven (11) categories of information

which "may⁵ be exempt from disclosure under the provisions of [the D.C.-FOIA]." D.C. Official Code § 2-534(a)(1)-(11) (emphasis added).⁶

D.C.-FOIA Exemption 2 protects from disclosure "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy[.]" D.C. Official Code § 2-534(a)(2).

D.C.-FOIA Exemption 4 vests public bodies with discretion to withhold "[i]nter-agency or intra-agency memorandums and letters which would not be available by law

⁵ In the legal sense, the "use of the word 'may' in a statute ordinarily denotes discretion." In re Langon, 663 A.2d 1248 (D.C. 1995). Indeed, the federal FOIA has been interpreted by federal courts to permit agencies to make discretionary disclosures of records otherwise exempt under at least four of the exemptions to the federal FOIA. See Bartholdi Cable Co. v. FCC, 114 F.3d 274, 282 (D.C. Cir. 1997) ("FOIA's exemptions simply permit, but do not require, an agency to withhold exempted information").

⁶ Taken together, sections 2-532(a) and 2-534 of the D.C. Official Code clearly mandate full disclosure of all public records maintained by District public bodies, to the extent that such records (or any reasonably segregable portions thereof), do not fall within the ambit of any of the statutory exemptions. See Barry v. Washington Post Co., 529 A.2d 319, 321 (D.C. 1987) ("The [D.C.-FOIA] provides for full disclosure unless the information requested is exempted under a specific statutory provision").

to a party other than an agency in litigation with the agency[.]" D.C. Official Code § 2-534(a)(4).

The names of OCF's employees who were awarded bonuses clearly qualify as "information of a personal nature" within the meaning of D.C.-FOIA Exemption 2.⁷ See, e.g., Judicial Watch v. Export-Import Bank, 108 F. Supp.2d. 19, 36 (D.D.C. 2000) ("The first criterion of [the FOIA privacy exemption] is met if the information applies to a particular individual"). As such, OCF's decision to withhold the information about employees who received performance bonuses from disclosure to the appellant pursuant to his D.C.-FOIA request is required to be evaluated under the standards applicable to the second prong of D.C.-FOIA Exemption 2.

Therefore, it is necessary to consider whether, as OCF claims, the disclosure of responsive records would constitute a clearly unwarranted invasion of personal privacy within the meaning of D.C.-FOIA Exemption 2. See

⁷ Construed literally, D.C.-FOIA Exemption 2 yields two preconditions that must be satisfied before a public body can properly invoke the exemption to withhold responsive documents. First, the information must be of a personal nature; and second, the disclosure of such information must constitute a "clearly unwarranted invasion of personal privacy." D.C. Official Code § 2-534(a)(2).

United States Department of State v. Washington Post Co.,
456 U.S. 595, 602 (1981) ("When disclosure of information
which applies to a particular individual is sought from
Government records, [it] must [be] determine[d] whether
release of the information would constitute a clearly
unwarranted invasion of that person's privacy.").

The propriety of an public body's decision to withhold
information of a personal nature from disclosure to a third
party pursuant to D.C.-FOIA Exemption 2 was at issue in
Hines v. Board of Parole, 567 A.2d 909 (D.C. 1989).

In Hines, the D.C. Court of Appeals affirmed the trial
court's grant of summary judgment in favor of the Parole
Board which had invoked D.C.-FOIA Exemption 2 to deny an
inmate's D.C.-FOIA request for records relating to
applications filed by Lorton inmates requesting reduction
of their minimum sentences. The court concluded that it
"could reasonably be expected to constitute an unwarranted
invasion of personal privacy within the meaning of [D.C.-
FOIA Exemption 2]" to disclose to the requester "Board
records about other Lorton inmates . . . that show why a
decision was or was not made by the Board to seek a
reduction in sentence." Id. at 913.

During the course of reaching its decision, the court, citing the U.S. Supreme Court's decision in United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989), recognized that the determination as to whether personal information contained in public records is protected from disclosure required a balancing of "the privacy interest of those who are the subject of the documents in question or those who may be harmed by their release against the public interest in the release of the documents." Id. at 912.

In Reporters Committee, the U.S. Supreme Court reaffirmed several relevant principles enunciated in its earlier decisions interpreting the extent to which the public interest in certain information warrants an invasion of the personal privacy interests of an individual.

First, the Court intimated that "whether an invasion of privacy is warranted cannot turn on the purposes for which the request for information was made." Id. at 771. In this regard, the court remarked that "Congress 'clearly intended' the FOIA 'to give any member of the public as much right to disclosure as one with a special interest [in a particular document.]'" Id. (quoting NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 149 (1975)).

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Second, the court stated that it "must balance the public interest in disclosure against the interest Congress intended the exemption to protect." Id. at 776. In elaborating upon this second principle, the court found its decision in Department of Air Force v. Rose, 425 U.S. 352 (1965) to be illustrative.

In Rose, at issue was whether the U.S. Air Force properly redacted the names of cadets from disciplinary hearing summaries disclosed pursuant to a federal FOIA request.

Commenting on its decision in Rose, the U.S. Supreme Court in Reporters Committee remarked that "[t]he summaries obviously contained information that would explain how the disciplinary procedures actually functioned and therefore were the appropriate subject of a FOIA request." Id. at 773. Regarding the redaction of the "information that would identify the particular cadets to whom the summaries related," the court opined:

The deletions were unquestionably appropriate because the names of the particular cadets were irrelevant to the inquiry into the way the Air Force Academy administered its Honor Code; leaving the identifying material in the summaries would therefore have been a "clearly unwarranted" invasion of privacy.

Id. at 773-74.

Finally, the court stated that disclosure is in the public interest when it achieves "the core purposes of the FOIA [which is] to contribut[e] significantly to public understanding of the operations or activities of the government." Id. at 775.

Although Reporters Committee specifically dealt with the privacy rights implicated in the disclosure of law enforcement records under federal FOIA Exemption 7(C) and not with the privacy interests triggered under federal FOIA Exemption 6, the principles enunciated in that case apply to both circumstances. See United States Department of Defense v. Federal Labor Relations Authority, 510 U.S. 487 (1994); Rose, supra, at 372 ("Congress sought to construct [federal FOIA Exemption 6]" to "require a balancing of the individual's right of privacy against the preservation of the basic purpose of the [FOIA] 'to open agency action to the light of public scrutiny.'").

Applying the legal principles enunciated by the court in Reporters Committee to the instant matter, it is necessary to balance the individual privacy interests of the employees of OCF who received performance awards during the years in question, against the extent to which the public disclosure of the requested information "would

'she[d] light on [OCF's] performance of its statutory duties' or otherwise let citizens know 'what [OCF] is up to.'" United States Department of Defense v. Federal Labor Relations Authority, (DoD v. FLRA), 510 U.S. 487 (1994) (quoting Reporters Committee, supra, at 773):

In Tomscha v. Giorgianni, No. 03 CIV. 6755 (DLC), 2004 U.S. Dist. LEXIS 10057 (S.D.N.Y. 2004), the plaintiff, Larry Tomscha ("Tomscha"), filed a lawsuit to compel the General Services Administration ("GSA") to disclose, inter alia, the amount of a performance award given to a co-worker. Tomscha was concerned that there was a large disparity in the amount of the award that he received vis-à-vis what his co-worker received during the same time period.

The GSA withheld from disclosure to Tomscha information which would disclose the amount of a June 26, 1996 performance award based on its "reasoning that the award amount could allow a 'mathematical linkage' to [the co-worker's] performance appraisal." Id. at *5.

Tomscha administratively appealed, inter alia, the denial of his request for information pertaining to the amount of his co-worker's performance award to a panel from GSA's FOIA Office which concluded that the co-worker "[h]ad

a personal privacy interest in his performance appraisal, which the performance amount reflects, and there is no public interest to be served by disclosure that outweighs the personal privacy interest in non-disclosure." Id. at *7. Tomscha thereafter initiated a civil action in federal district court.

In balancing the relevant interests, the trial court found that "[t]he withheld documents . . . implicate the privacy interest of [Tomscha's co-worker]" who "like any employee, has a strong interest in keeping private the details of his job performance." Id. at *13. On the other side of the balancing equation, the trial court found that "[t]he public has an interest in ensuring that . . . awards are fairly distributed, and that agencies properly adhere to their stated guidelines in distributing . . . awards." Id. at *15.

The trial court concluded that the co-worker's privacy interest in the details of his work performance was substantial and outweighed the public interest in "the disclosure of the documents sought by Tomscha [which] would not contribute significantly to the public's understanding of the activities of its government." Id. at *16.

Like the performance award system in Tomscha, the District government's Incentive Awards Program, established pursuant to the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, authorizes the granting of monetary incentive awards to employees who receive "an approved performance evaluation rating of 'Excellent' or 'Outstanding' under the Performance Evaluation System." <http://www.dcop.in.dc.gov>.

Because awards of performance bonuses to District employees are directly tied to their performance appraisals, the disclosure of *personal identifying information* about the employees in OCF who received performance awards could, through the process of elimination, easily lead to the discovery of which OCF employees did not receive monetary awards, presumably based on their less than favorable performance evaluations. See FLRA v. Dep't of Commerce, 962 F.2d 1055, 1059 (D.C. Cir. 1992) ("a list identifying those employees who received outstanding and commendable ratings reveals by omission the identities of those employees who did not receive high ratings, creating an invasion of their privacy."). Moreover, the "[d]isclosure even of favorable information may well embarrass an individual or incite jealousy in his or her co-workers." Ripskis v. HUD, 746

F.2d 1, 3 (D.C. Cir. 1984). Disclosure of such award information would also "be likely to spur unhealthy comparisons among [OCF] employees and breed discord in the workplace." Id.

On the other side of the D.C.-FOIA Exemption 2 balancing test, as the court noted in Tomscha, "[t]he public has an interest in ensuring that the awards are fairly distributed and that agencies properly adhere to their stated guidelines in distributing the awards." Tomscha, supra, at *15.

Therefore, this office concludes that the appellant has articulated a legitimate public interest in the disclosure of the requested information because he has asserted that "[t]he purpose of [his] request was to determine whether bonuses awarded by the Office of Campaign Finance were in accordance to [sic] the award limitations established by D.C. Official Code § 1-619.[02]." Mathis Appeal Letter ¶ 2.

Based on the logic of Tomscha, and the other relevant federal FOIA cases cited above, the Secretary of the District of Columbia concludes that the privacy interests of the OCF employees who received monetary awards

substantially outweighs the public interest in the disclosure of the *names, job titles, and grades* of such employees to the public.

Accordingly, the instant appeal is denied, in part, with respect to OCF's decision to withhold such personal identifying information from disclosure to the appellant pursuant to his D.C.-FOIA request.

With respect to the remaining information that is within the scope of the appellant's D.C.-FOIA request (*i.e.*, all bonuses issued by OCF between January 1, 1997 and May 6, 2004, dates of issuance thereof, and the amounts of such bonuses), the Secretary of the District of Columbia concludes that such information is subject to disclosure unless it is inextricably intertwined with the protected information.⁸

⁸ In the *Appeal of Dan Keating, Database Editor, The Washington Post*, Matter No: FY0412 (February 23, 2004), 51 D.C. Reg. 2540, 2548 n. 4 (March 5, 2004), this office opined, based on federal FOIA jurisprudence, that D.C. Official Code § 2-534(b) permits the withholding of the entire contents of a document *only* where non-exempt material is "inextricably intertwined" with exempt portions of such document. See, *e.g.*, *Mead Data Central, Inc. v. United States Department of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977) (D.C. Circuit held that "it has long been the rule . . . that non-exempt portions of a document must be disclosed unless they are inextricably intertwined with exempt portions.").

Because OCF's denial letter did not address whether any reasonably segregable portions of responsive documents could be provided to the appellant after the deletion of those portions which may be properly withheld from disclosure, it is necessary to remand this matter to OCF for further consideration.

CONCLUSION

For the reasons set forth above, the present appeal is denied, in part, and remanded, in part, to OCF to address the issue as to whether any portion(s) of the withheld records can be reasonably segregated from the exempt information and disclosed to the appellant.

OCF shall submit a written response to the Office of the Secretary, with a courtesy copy to the appellant, within ten (10) working days of its receipt of this final decision of its determination on the issue of segregability.

OCF is further directed to provide a written certification to the Mayor (via the General Counsel to the Mayor), with a copy to the Office of the Secretary, indicating its compliance with this decision, or the reasons for noncompliance with the directives of this decision.

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This constitutes the final decision of the Secretary
of the District of Columbia in this matter.

/s/

SHERRYL HOBBS NEWMAN
SECRETARY OF THE DISTRICT OF COLUMBIA

8049

THURGOOD MARSHALL ACADEMY

Notice of Request for Proposal

August 11, 2005

The proposed Thurgood Marshall Academy, in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995 ("Act") hereby solicits proposals for the following services for the school:

- I. Building Engineer and Security: Services to provide security needs and supervision of plant operations and routine maintenance inside the school and surrounding property.**

Additional information can be obtained by calling 202-563-6862. Deadline for submissions is August 26, 2005 at 5:00 P.M.

DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSALS (RFP)

PROJECT TITLE: THE PROGRESSIVE PARTNER'S JOB TRAINING PROGRAM
RFP NO.: POKA-2005-R-0003-CB

1. The District Department of Transportation (DDOT) in partnership with the Federal Highway Administration (FHWA) is soliciting proposals to provide comprehensive training services in Spanish and/or English as needed for the DDOT pre-selected trainees participating in the Department's On-the-Job (OJT) program. The purpose of the OJT Program is to provide training for minorities, women and otherwise disadvantaged individuals currently employed or otherwise seeking employment in OJT training slots on highway construction-related jobs with DDOT highway construction contractors, and to assist the trainees prepare for full time employment. A list of several classes/courses are:
 - a. Job Etiquette/Job Retention
 - b. Time Management/Punctuality
 - c. Survival Techniques for Working in Construction
 - d. Teamwork/Taking Orders
 - e. Cultural Diversity
 - f. Conversational English/Spanish for Construction Communication (Concurrent)
 - g. Trade Math Instruction/Measuring
 - h. Blue Print/Construction Plans Reading
 - i. OSHA Safety Training
 - j. Intro to Computers for Basic Construction-Related Technical Computer Skills
 - k. Safe Use of Construction Equipment & Tools Recognition
2. This proposal is a one-year firm-fixed price contract with cost reimbursement items and four option years. The total contract term shall not exceed five years. The District reserves the right to award any or all option years of this proposal.
3. Interested vendors desiring consideration for The Progressive Partners Job Training Program contract should submit their Request for Proposals. The successful contractor will be selected based on the following evaluation criteria:
 1. Qualifications and Past Experience
 2. Price Reasonableness
 3. Training Program and Administration, Reporting and Qualifications
4. DDOT will make a selection in accordance with the provisions of Title 27 DCMR Chapter 16. The Contracting Officer in accordance with Title 27 DCMR Chapter 16 will make the final selection.

5. Proposals will be available to pick up at the Frank D. Reeves Municipal Center, 2000 14th Street, NW, Office of Administrative Services, Contracting and Procurement, Construction Contract Support Branch, 3rd Floor, Bid Room, Washington, DC 20009.
6. Proposals must be delivered no later than 2:00 p.m. on September 14, 2005 to the Office of Administrative Services, Contracting and Procurement, Construction Contract Support Branch, 3rd Floor, Bid Room, Washington, DC 20009.
7. All interested firms are invited to a **pre-proposal meeting** to be held on **August 18, 2005** at **10:00 a.m.** in the Frank D. Reeves Municipal Center, 2nd Floor, Community Room, Washington, D.C. For further procurement information, contact Betty Brooks at (202) 671-1564. For technical information, contact Ronnie Edwards at (202) 671-2283 or **Taji Anderson at (202) 671-3494.**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17251-A of Paul and Frances O'Reilly, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of a two-story rear addition to a single-family semi-detached dwelling under § 223 of the Zoning Regulations, not meeting the rear yard requirements (§ 404), side yard requirements (§ 405), and the non-conforming structure provisions (§ 2001.3) in the R-1-B District at premises 3715 Albemarle Street, N.W. (Square 1888, Lot 48)

HEARING DATE: December 14, 2004

DECISION DATE: January 4, 2005

**DECISION DATE ON MOTION
FOR RECONSIDERATION:** August 2, 2005

DISMISSAL ORDER

On July 12, 2005, the Board of Zoning Adjustment (Board) received a written motion (Exhibit No. 37) from Emilia Psillos seeking reconsideration of the Board's decision in its final decision order dated June 29, 2005, to approve Application No. 17251. Emilia Psillos was granted party status and participated in the original application.

On August 2, 2005, the Board, at its regularly scheduled and duly noticed public meeting considered the motion for reconsideration.

Subsection 3126.2 of the Zoning Regulations states that "Any party may file a motion for reconsideration or rehearing of any decision of the Board, provided that the motion is filed with the Director within ten (10) days from the date of issuance of a final written order of the Board."

The Board found that the motion was not filed in a timely manner, as the motion was received by the Director of the Office of Zoning more than 10 (ten) days after the date of issuance of the final written order of the Board. Therefore, for the reasons stated above, the **MOTION for RECONSIDERATION** is hereby **DISMISSED**.

VOTE: **3-0-2** (Geoffrey H. Griffis, Ruthanne G. Miller, and John A. Mann. II in favor of the motion to dismiss, Curtis L. Etherly, Jr. necessarily absent and the Zoning Commission member not present not voting)

Note: Although Mr. Etherly submitted an absentee ballot to deny the request for reconsideration, he did not vote on the motion to dismiss due to the request being untimely filed.

Vote taken on August 2, 2005

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Decision and Order.

BZA APPLICATION NO. 17251-A

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FINAL DATE OF ORDER: August 3, 2005

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT. rsn

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17352 of 1464 Harvard LLC, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403, to construct a multi-family (14 units) residential building in the R-5-B District at premises 1464 Harvard Street, N.W. (Square 2668, Lot 69).

HEARING DATE: June 19, 2005
DECISION DATE: August 2, 2005

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B which is automatically a party to this application. ANC 1B submitted a report in support of this application. The Office of Planning (OP) also submitted a report in support of the application.

Based upon the record before the Board and having given great weight to the ANC and the Office of Planning reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2 and 403 that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.¹

¹ Although the Board concludes that the Applicant meets the three prongs of the variance test and that, therefore, the variance can be granted, there is still some uncertainty as to whether variance relief is necessary. The Board, stepping into the shoes of the Zoning Administrator and re-examining the issue, tends to agree with the Zoning Administrator's first interpretation that no such relief is necessary here. The Zoning Administrator, however, changed their interpretation and suggested that the Applicant needed a variance from lot occupancy. Without having the Zoning Administrator before it to explain the reasoning underlying this change of interpretation, the Board is lacking complete information and therefore does not dismiss this application as not needing relief. Instead, the Board has processed the application as presented, i.e., as a request for a variance and has made its determination based on the variance test.

AUG 19 2005

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann II,
and John G. Parsons to approve; Curtis L. Etherly, Jr. to
approve by absentee ballot)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: AUG 03 2005

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS

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ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

TWR

ZONING COMMISSION NOTICE OF FILING
Case No. 05-23
(Consolidated PUD & Related Map Amendment – Square 3576, Lot 815)
August 9, 2005

THIS CASE IS OF INTEREST TO ANC 5C

On July 28, 2005, the Office of Zoning received an application from CSX Realty Development Corp. and FF Realty, LLC (collectively the “applicant”) for approval of a consolidated planned unit development and a related map amendment for the above-referenced property.

The property that is the subject of this application consists of Square 3576, Lot 815 in Northeast Washington, D.C. (Ward 6), bound by Eckington Place, N.E. and Harry Thomas Way, N.E. The property is currently zoned M.

The applicant proposes to construct a mixed use, predominately residential, project that will include approximately 675-700 new residential units, and approximately 9,730 square feet of ground floor retail. In addition, the applicant seeks a related map amendment to rezone the site to C-3-C. This request is not inconsistent with the Comprehensive Plan of the District of Columbia.

For additional information, please contact, the Secretary to the Zoning Commission at (202) 727-6311.

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4. ANC 8A submitted a report dated June 8, 2005, indicating its support for approval of the applications.
5. At the June 23, 2005, hearing, the Zoning Commission took proposed action by a vote of 4-0-1 to approve, with conditions, the applications and plans that were submitted to the record.
6. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") for a thirty-day period of review as required by the District Charter. In order to accommodate this review period, this application was not scheduled for final action until July 25, 2005. NCPC, by letter dated June 29, 2005, indicated that it would be unable to consider the matter by that date.
7. The Commission, therefore, proceeded with final action as scheduled and approved the applications.

The PUD Project

8. The PUD proposes the construction of an office building with two (2) building components (a main building [the "MLK Wing"] and a smaller extension [the "Good Hope Wing"]) having a combined gross floor area of approximately 335,270 square feet, a cellar of approximately 14,835 square feet, and two (2) levels of underground parking. The PUD will have an approximate density of 2.93 FAR and a maximum height of eighty (80) feet for the MLK Wing, with the height of the eastern portion of the building stepped down to approximately forty-four (44) feet. The Good Hope Wing located at the southeast corner of the site will have a height of approximately forty-four (44) feet. The primary occupant of the building will be the District Department of Transportation ("DDOT"); retail and service uses will also occupy space within the building.
9. The proposed PUD is located at Parcel 224/31, Lot 17 in Square 5600, and Lots 54, 857 (part of), 858, 859, and 860 in Square 5601 and the various portions of the alleys and streets proposed to be closed which currently run through, between, and along Squares 5601 and 5600. The site is oddly shaped and contains approximately 114,312 square feet of land area. The site is within three (3) different zoning districts: approximately 26,266 square feet of the site is in the C-M-1 District, approximately 45,596 square feet is within the C-3-A District, and approximately 42,440 square feet is within the R-3 District.
10. The surrounding area is characterized by a mixture of residential and commercial uses. To the north of the site are the ramps to and from the Anacostia River Bridges. To the east are 13th Street, the 13th Street on-ramp to the bridge, and a residential community. The western boundary of the site runs along Martin Luther King, Jr., Avenue, as well as adjacent to the property to be developed by the AEDC. The AEDC property is zoned

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C-3-A and currently proposed for future commercial office and retail development. The southern side of the site is across the street from the commercial area along Good Hope Road.

11. The site is located approximately one-half mile from the entrance to the Anacostia Metrorail Station, approximately 600 feet from a proposed stop along the future Light Rail, and less than one block from three (3) different Metrobus stops. The Generalized Land Use Map of the Comprehensive Plan designates the Site as moderate density commercial, and the Policies Map designates it as within a New or Upgraded Multi-Neighborhood Commercial Center.
12. The PUD regulations require a site in the C-3-A District to contain a minimum of 15,000 square feet of land area. The total land area of the entire PUD site is 114,302 square feet, and thus meets the minimum area requirements for a PUD.

Matter of Right Development Under Existing Zoning

13. Approximately forty percent (40%) (45,596 square feet) of the site is zoned C-3-A. The C-3 Districts are designed to accommodate major business and employment centers supplementary to the C-4 District (11 DCMR § 740.1) with medium density development in the C-3-A. 11 DCMR § 740.4. The C-3-A District permits a maximum height of sixty-five (65) feet, with no limit on the number of stories, and a maximum density of 4.5 FAR, of which no more than 2.5 may be commercial. 11 DCMR §§ 770.1, 771.2. An office building in the C-3-A District is permitted as a matter-of-right, and parking is required at a rate of one space for each additional 600 square feet of gross floor area and cellar floor area in excess of 2,000 square feet. 11 DCMR § 2101.1. Commercial development of approximately 113,990 square feet is permitted as a matter-of-right on this portion of the site. A PUD in the C-3-A District may have a maximum height of ninety (90) feet (subject to the 1910 Height Act), with no limit on the number of stories, and a maximum density of 3.0 FAR for commercial use. 11 DCMR §§ 2405.1, 2405.2.
14. Approximately twenty-three percent (23%) (26,266 square feet) of the Site is zoned C-M-1. C-M Districts are intended to provide for heavy commercial and light industrial activities employing large numbers of people. 11 DCMR § 800.1. The C-M-1 District permits a maximum height of forty (40) feet and three (3) stories. 11 DCMR § 840.2. The maximum permitted density in the C-M-1 District is 3.0 FAR. 11 DCMR § 841.1. Commercial development of approximately 78,798 square feet is permitted as a matter-of-right on this portion of the site. A PUD in the C-M-1 District may have a maximum height of sixty (60) feet and a maximum density of 3.0 FAR. 11 DCMR §§ 2405.1, 2405.2.
15. Approximately thirty-seven percent (37%) (42,440 square feet) of the site is zoned R-3. The R-3 District is designed essentially for row dwellings, but includes those areas within

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which row dwellings are mingled with one-family detached and semi-detached dwellings. 11 DCMR § 320.1. The R-3 District permits a maximum height of forty (40) feet, with a limit of three (3) stories. 11 DCMR § 400.1. The Zoning Regulations do not prescribe a maximum density in the R-3 District. The maximum lot occupancy for row dwellings, churches or public schools is sixty percent (60%); for all other structures, the maximum is forty percent (40%). 11 DCMR §§ 402.4, 403.2. A PUD in the R-3 District may have a maximum height of forty (40) feet and a maximum density of 0.6 FAR devoted entirely to residential use. 11 DCMR §§ 2405.1, 2405.2.

Matter of Right Development Under Proposed Zoning

16. Under the proposed PUD, the zoning of the entire site would become C-3-A. The C-3-A District permits a maximum height of sixty-five (65) feet, with no limit on the number of stories, and a maximum density of 2.5 FAR. 11 DCMR §§ 770.1, 770.2. Under the PUD guidelines for the C-3-A District, the maximum height is ninety (90) feet and the maximum density is 3.0 FAR. 11 DCMR §§ 2405.1, 2405.2. Parking is required for an office building in the C-3-A District at a rate of one parking space for each 600 square feet of gross floor and cellar area in excess of 2,000 square feet. 11 DCMR § 2101.1.

Development Flexibility and Incentives

17. The Applicant requested flexibility from the following requirements:
- a. *Parking.* The Applicant requested flexibility to reduce the number of required parking spaces. The Zoning Regulations require 581 parking spaces and the Applicant requested to provide 436 spaces, a twenty-five percent (25%) reduction. The Applicant presented evidence that only 384 parking spaces will be needed for DDOT's employees, contractors, and visitors. The building has a low occupancy ratio that is approximately three (3) times lower than the typical occupancy ratio. A reduction in the parking is appropriate in this circumstance and will not adversely affect the surrounding community, as set forth in the report of Wells and Associates, the Applicant's traffic consultant.
 - b. *Roof Structures.* The Applicant requested flexibility from the requirements of §§ 411 and 770.6 that the roof structures be setback from all exterior walls at a 1:1 ratio and that the enclosure is not of equal heights. The enclosure is not setback the required eighteen (18) feet on the south and west sides. On the west side the setback is 16.5 feet and on the south side the setback is 16.5 and 9.3 feet. The flexibility is required due to the building's shape and location of the skylights that provide direct light to the atrium on the first floor. The enclosure is of unequal height to reduce the massing of the enclosure. The proposed flexibility will not diminish the intent of the requirements to provide uniformity of the structure and reduce the impact of the perceived height of the building.

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- c. *Side Yard.* The Applicant requested flexibility from the requirements of § 775.5 that, if a side yard is provided, it shall be at least two (2) inches for every foot of height of the building. The height of the building is eighty (80) feet and therefore a side yard of 13.3 feet would be required. The design of the building provides a side yard of 7.2 feet along Good Hope Road. The side yard is reduced in order to provide continuity along Good Hope Road by matching the setback of the proposed AEDC building allowing for adequate pedestrian passage, additional landscaping and facilitating access and visibility of the ground floor retail uses along Good Hope Road.

18. The following benefits and amenities will be created as a result of the PUD project:

- a. *Urban Design, Architecture, Landscaping, and Open Space.* The Applicant has presented an exceptional and appropriate architectural design for the project. The Anacostia Gateway Government Center will provide a strong civic image from both within the community and from across the river; it will be a symbolic gateway to the rejuvenated Anacostia community, and will serve as a transition to the historic district of Old Anacostia. The proposed government center has undergone extensive review with regard to its design and architecture and has received favorable recommendations from NCPC and the Commission of Fine Arts.

The Project will include enhancements to the existing streetscape with plans for improvements along Martin Luther King Avenue, 13th Street, and Good Hope Road. The streetscape concept transitions from civic to urban to residential as one moves around the site. The Martin Luther King, Jr. Avenue streetscape is a civic space, a semi-circular paved plaza. The Good Hope Road streetscape is urban, matching the look of main street Anacostia. The 13th Street streetscape is more landscaped and park-like to complement its residential neighbors across the street.

- b. *Transportation Features.* The off-street parking provided, as discussed in the Traffic Report, far exceeds the requirements of the proposed tenant, the Department of Transportation. Further, the parking will be provided in a below-grade garage. The project offers several transportation management measures and will not significantly impact the traffic situation for the area. The project is located near three Metrobus stops and is approximately one-half mile from the Anacostia Metrorail Station and only 600 feet from a proposed stop of the future Light Rail. This proximity results in a significant proportion of site trips being made by mass transit or other non-passenger car modes. Furthermore, DDOT will encourage its staff to make use of the many available public transportation options.

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In response to community comments, the circulation plan of the project has been modified so that the main access to the garage and loading area will be from the east-west service road through the interior of the project.

The PUD site has excellent access to I-295 and other major roadways. The development has also been designed with two (2) entrances and exits to the parking garage. In addition there are three (3) points to access the alley leading to the garage entrance, functioning to improve access to the property and vehicular movement on the surrounding street system.

- c. *Environmental Benefits.* The Applicant is committed to making the AGGC a LEED "Silver" certified, energy efficient and environmentally friendly building.
- d. *Special Value to the Neighborhood.* Visitor parking, customer service areas and the public outreach portion of DDOT's role in the community are just some of the project's connectivity to the general public. The public outreach sections are to be accessible for the distribution of child safety seats, school transit passes, maps and other public interface activities.

The project adds special value to the neighborhood by providing 5,250 square feet of retail space on the ground floor of the AGGC. Additional retail space will be provided on the ground floor of the AEDC building due in large part to the efforts of the Applicant.

- e. *Employment and Training Opportunities.* The Applicant is committed to participating in a First Source Agreement with the DC Department of Employment Services and will obtain a Memorandum of Understanding.
- f. *Other Public Benefits and Project Amenities.* The project provides for economic development in an area designated as a New or Upgraded Multi-Neighborhood Commercial Center and is described by the Comprehensive Plan as "in critical need of economic development." The Applicant's proposal to locate a major office building for use by a D.C. Agency and provide retail opportunities in this area of the City will give a much needed boost to the economic development of the area. In addition to bringing economic development and opportunity, the Anacostia Gateway Government Center will bring government services closer to the people it serves in Ward 8.

The Project calls for a day care center for approximately twenty-five (25) children, an employee changing room and bicycle racks.

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The Applicant will enter into a Construction Management Plan with the community in an effort to minimize any potential adverse impacts resulting from the construction of the Project.

19. The proposed PUD advances the purposes of the Comprehensive Plan, is consistent with the Generalized Land Use Map, and furthers and complies with the major themes and elements for the District and Ward 8 in the Comprehensive Plan. The project significantly advances these purposes by promoting the social, physical, and economic development of the District through the provision of quality commercial development that will enhance the built environment.
20. The PUD is also consistent with many of the Comprehensive Plan's major themes, as follows:
 - a. *Stabilizing and Improving the District's Neighborhood.* The proposed PUD will stabilize and improve commercial character of the neighborhood.
 - b. *Respecting and Improving the Physical Character of the District.* The proposed PUD respects and improves the physical character of the District through the construction of a well-planned and carefully designed development. The PUD has an exceptional design that will significantly enhance the prominence of the Martin Luther King, Jr. Avenue and Good Hope Road commercial area and will complement the neighboring historic district.
 - c. *Reaffirming and Strengthening District's Role as an Economic Hub.* The Comprehensive Plan encourages maximum use of the District's location for both private and public growth to promote economic development. The government center provides additional jobs to strengthen the economic health of this area. The Comprehensive Plan encourages making maximum use of the District's location at the center of the region's radial Metrorail and commuter rail systems. 10 DCMR §109.1(b). The Project takes advantage of this asset by its location along major Metrobus routes and its proximity to the Anacostia Metrorail station and the future Light Rail system.
 - d. *Preserving and Ensuring Community Input.* The Comprehensive Plan also encourages the active involvement and input of local communities. For more than eighteen (18) months, the Applicant has worked with the Office of Planning in an effort to gather community input on the project and modify the design of the project to address community concerns.
21. The Project also furthers the specific objectives and policies of many of the Comprehensive Plan's major elements as follows:

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- a. *Economic Development Element.* According to the Economic Development Element of the Comprehensive Plan, the District places a high priority on the generation of new and productive uses of currently underused commercially- and industrially-zoned land. 10 DCMR § 200.10. The proposed PUD will dramatically improve upon the vacant parcels along Martin Luther King, Jr., Avenue and Good Hope Road. Another priority of the Economic Development Element is stimulating and facilitating a variety of commercial, retail, and residential development investments appropriate to selected Metrorail station areas outside of the Central Employment Area, consistent with the Land Use element and ward plans, with sensitivity to the surrounding area. 10 DCMR § 204.2(m). The PUD provides commercial development outside of the Central Employment Area that will maintain a significant number of jobs.

The objective of economic development outside of the Central Employment Area is to create and expand economic activity and employment centers. 10 DCMR 206.1 In support of such objective, it is a policy to support appropriate development of the Martin Luther King, Jr. Avenue corridor. 10 DCMR 206.2(b). The project furthers these objectives by locating a major office development with a retail component in this area.

- b. *Urban Design Element.* The Urban Design Element expresses the District's goal to promote the protection, enhancement, and enjoyment of the natural environs and to promote a built environment that serves as a complement to the natural environment, provides visual orientation, enhances the District's aesthetic qualities, emphasizes neighborhood identities, and is functionally efficient. 10 DCMR § 701.1. The Urban Design Element also has an objective of encouraging new construction in areas with vacant or underused land or structures in order to create a strong, positive physical identity. 10 DCMR § 712.1. The proposed PUD has been designed to enhance the physical character of the area and complement the materials, height, scale, and massing of the surrounding development. 10 DCMR § 708.2. The proposed PUD will enhance the commercial quality of the area through superior design elements that respect the special character of this prominent commercial corridor. The design is respectful of the local architecture and will serve as a compliment to Historic Anacostia. It is the goal of the District to "encourage new development within areas of strong architectural character to contribute to the physical identity and character of the area." 10 DCMR 710.2(d). The proposed project will provide a distinguished design that provides a rich and vibrant texture to this prominent gateway and enhances the vibrancy of this commercial corridor. The streetscape objective of this element is to establish a clear classification of streets and sidewalks that is functionally efficient and visually coherent, enhances the pedestrian environment, and provides for the orderly movement of goods and services. 10 DCMR § 709.1.

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- c. *Environmental Protection Element.* It is the goal of the District to “protect the environment, to resist threats to its overall quality, and to act to maintain and enhance its positive features in the interest of residents, workers and visitors....” 10 DCMR § 401.1. The Applicant is committed to obtain LEED silver certification, creating a building that is energy efficient and environmentally friendly. DDOT, the major tenant of the proposed office building, will encourage and foster the use of public transportation by its employees.
 - d. *Transportation Element.* It is the goal of the District to “[p]romote the increased use of mass transit, in the District and the region.” 10 DCMR § 503.2(c). Development of the project at the present site along major Metrobus routes and within close proximity to the Anacostia Metrorail Station and the future Light Rail will promote and stimulate the use of existing mass transit service. The goal of Comprehensive Plan’s transportation element is to provide for the efficient movement of people and goods within the District and its metropolitan area. See 10 DCMR § 500.2. The policies established in support of the general transportation objectives include supporting land use arrangements that simplify and economize transportation services. 10 DCMR § 502.1(a). The location of the project along major Metrobus routes and near the Anacostia Metrorail Station and future Light Rail furthers this goal. DDOT plans to encourage the use of public transit by its staff.
 - e. *Land Use Element.* It is the goal of the District to “promote appropriate commercial development, including centers for retail and office uses, to serve the needs of the economy of the District and its neighborhoods....” 10 DCMR § 1108.1(a). The project responds to this goal by providing a moderate density commercial office structure of superior design that will foster the continued growth of the District's economy and employment base and serve as a landmark to this focal point for the Anacostia Gateway and commercial corridor.
22. The project also fulfills and furthers the specific objectives for this area, as set forth in the Comprehensive Plan for Ward 8:
- a. *Ward 8 Economic Development.* The Ward 8 Element states that “increased economic development is a particularly critical need.” 10 DCMR § 1904.1. Less than two percent (2%) of the land area in Ward 8 is devoted to commercial uses. 10 DCMR § 1904.3. Ward 8 offers fewer commercial services to its residents than any other ward in the city. The proposed PUD contributes needed economic development to Ward 8 by establishing a premier office building and developing new retail space in this location.
 - b. *Ward 8 Urban Design Element.* The Ward 8 Urban Design Element encourages new development in areas with vacant or under used land to secure a strong, positive, physical identity, and the coordination and strengthening of the design

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function and image of commercial corridors that serve neighborhoods. 10 DCMR 1920.1(g). The project furthers these goals. The project brings new development to an underutilized area with a promising future. The project has been designed to enhance the physical character of the area and complement the materials, height, scale and massing of the nearby moderate density commercial uses and the established moderate density residential community to the east.

- c. *Ward 8 Land Use Element.* The Land Use Element for Ward 8 encourages renovating or replacing blighted or unused properties to remove actual or potential locations for illegal drug activity and to increase the amount of commercial development in ways that minimize adverse impacts on nearby residential neighborhoods. 10 DCMR 1928.14(a)(d). The Project advances these goals by: locating a premier office building in an underutilized area; improving the image of this commercial area, and; avoiding conflicts or negative impacts on the nearby community through use of an appropriate design and planning.

Housing Linkage

24. The Applicant requested that the Commission eliminate the housing linkage requirement set forth in § 2404 of the Zoning Regulations. Subsection 2404.4 (d) authorizes a reduction or elimination of the requirement if:

- (1) The property is located in an area classified in the Generalized Land Use Map of the Comprehensive Plan as a Development Opportunity Area, a Production and Technical Employment Area, or a New or Upgraded Commercial Center; and
- (2) The Commission finds, after public hearing, that the reduced or eliminated housing requirement is necessitated or justified by the PUD's provision of other public benefits that are of exceptional merit and in the best interests of the city or the country.

25. The PUD is within an area designated as a new or upgraded Multi-Neighborhood Commercial Center on the Generalized Land Use Map

26. The Commission finds that the PUD is providing other public benefits that are of exceptional merit and are in the best interests of the District, as described in Finding No. 18. The complete elimination of the housing linkage requirement is justified.

Office of Planning Report

27. By report dated June 13, 2005, and through testimony presented at the public hearing, the Office of Planning ("OP") recommended approval of the PUD application. OP noted that the proposed PUD is not inconsistent with the Comprehensive Plan. OP further noted that the proposal is consistent with the objectives and evaluations standards of a PUD.

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OP stated that the PUD would be an asset to the community and the building will serve as a landmark at the entrance to the community. OP strongly supported approval of the PUD.

District Department of Transportation Report

28. By report dated June 16, 2005, the DDOT stated its strong support for the PUD.

Advisory Neighborhood Commission

29. By resolution dated June 8, 2005, dated ANC 8A unanimously supported the PUD project and map amendment rezoning the whole property to C-3-A.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD is within the applicable height, bulk, and density standards of the Zoning Regulations. The size, scale, design, and use of the building are appropriate for this site and the civic nature of Martin Luther King Jr. Avenue. Accordingly, the project should be approved. The impact of the project on the surrounding area is not unacceptable. As set forth in the Findings of Fact, the proposed development has been appropriately

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- designed to respect the nearby historic district and in terms of height and mass is complementary to the adjacent commercial and residential buildings.
6. The applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
 7. The number and quality of the project benefits and amenities offered are commensurate with the degree of flexibility granted for the development proposed on the site, including the requested reduction in parking and relief from the side yard and roof structure requirements. The PUD responds to both the surrounding commercial and residential buildings and the nearby historic district.
 8. The elimination of the housing linkage requirement is justified because the PUD is within an area designated as a new or upgraded Multi-Neighborhood Commercial Center on the Generalized Land Use Map and the project benefits and amenities are of exceptional merit and are in the best interests of the City.
 9. Approval of this PUD is appropriate, because the proposed development is consistent with the present character of the area.
 10. Approval of this PUD and change of zoning is not inconsistent with the Comprehensive Plan.
 11. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give great weight to the affected ANC's recommendation. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.
 12. The applications for a PUD and map amendment will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
 13. The applications for a PUD and map amendment are subject to compliance with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended.

DECISION

In consideration of the Findings of Fact and the Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the applications for consolidated review of a planned unit development and PUD-related Zoning Map AMENDMENT for Parcel 224/31, Lot 17 in Square 5600 and Lots 54, 858, 859, 860 and part of 857 in Square 5601 and the various portions of the alleys and streets proposed to be closed which currently run through, between and along Squares 5601 and 5600 to the C-3-A District, subject to the following guidelines, conditions, and standards:

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1. The PUD shall be developed substantially in accordance with the plans prepared by Heery International, Inc., dated June 3, 2005, marked as Exhibit No. 15 of the record (the "Plans"), as modified by the guidelines, conditions, and standards herein.
2. The PUD shall be an office building with space for public functions and retail and service uses as shown on the submitted plans. The building shall contain approximately 350,105 square feet of gross floor area. The total project shall have an overall density of approximately 2.93 FAR.
3. The maximum height of the building shall be eighty (80) feet, as shown on the Plans. The building may include a roof structure with a height not to exceed 18.5 feet, as shown on the Plans.
4. The Project shall include a minimum of 436 parking spaces in the below-grade parking garage.
5. The Project shall include three thirty-foot deep loading berths and one twenty-foot deep service/delivery/loading space as shown on the Plans.
6. The Applicant shall include landscaping for the project as shown on the Plans. The Applicant or its successors shall maintain all landscaping.
7. Landscaping in the public space on the surrounding public streets shall be in accordance with the Plans, as approved by the Public Space Division of DDOT. The Applicant or its successors shall maintain all landscaping in the public space.
8. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atrium and mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not materially change the exterior configuration of the building;
 - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials;
 - c. To make minor modifications to the exterior design, materials, and landscaping in response to the final review by the Commission of Fine Arts;
 - d. To make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments and trim, or any other minor changes to comply with the District

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of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals; and

- e. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, as long as the number of parking spaces does not decrease below a minimum of 436 spaces.
9. No building permit shall be issued for this PUD and the PUD-related map amendment shall not become effective until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.
10. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.
11. The PUD approved by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three (3) years of the effective date of this Order.
12. The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services ("DOES") in order to achieve the goal of utilizing District of Columbia residents for at least fifty-one percent (51%) of the jobs created by the PUD project. After completion of construction of this project, the Applicant shall provide a written status report to the Zoning Commission and the DOES regarding compliance with this agreement.
13. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

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On June 23, 2005, the Zoning Commission approved the applications by a vote of 4-0-1 (Anthony J. Hood, Gregory Jeffries, John G. Parsons, and Kevin Hildebrand to approve; Carol J. Mitten not voting, having recused herself).

The Order was adopted by the Zoning Commission at its public meeting on July 25, 2005, by a vote of _____.

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on _____.

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